IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5350 OF 2005

Shridhar Sumant Vagal ...Applicant.

V/s

1. The State of Maharashtra
and anr. ...Respondents.

Mr. Shekhar Naphade with Mr. Ashwin Naik, Bharat Dhoria, Curush Bilimoria with Ms. Deepa Bajaj for the applicant

Ms. Rajeshree M. Gadhvi, APP for the State.

Mr. Raja Thakore with Mr. S. Chinchalkar for the respondent No.2 - CBI

CORAM: V.M. KANADE, J.

DATE: 21st July, 2006

P.C.:

1. This is an application for bail which is filed by the applicant who is an original accused No. 59 in Special Case No. 2 of 2004 which is pending in the Court of the learned Special Judge at Pune, appointed under the provisions of the Maharashtra Control of Organized Crimes Act, 1999 (hereinafter referred to as "MCOCA, 1999"). This case relates to C.R. No. 135 of 2002 of the Bund Garden Police Station, Pune and is known as Telgi case. The applicant was arrested on 7/11/2003 under sections 120B, 216, 218, 221 of the Indian Penal Code read with sections 3(2) , 3(5), 24

of MCOCA read with sections 7 and 13(1)(d) of the Prevention of Corruption Act. The applicant was produced before the learned Judicial Magistrate, First Class on 8/11/2003 and, thereafter, he was remanded to police custody from time to time and, finally, he was taken in judicial custody. He was lodged in Yerwada Central Jail, Pune and was released on medical bail for some time on 30/8/2004. The applicant was taken into custody and was ordered to be kept in Arthur Road Prison. Thereafter, on account of his deteriorating health, the applicant was sent to Nanavati Hospital. Charge-sheet in the said case had been filed and was served on the applicant on 2/2/2004.

2. I have heard the learned Counsel appearing on behalf of the applicant and the learned Counsel appearing on behalf of the respondents at length.

SUBMISSIONS:

3. The learned Senior Counsel appearing on behalf of the applicant has submitted, firstly, that as far as the allegation of conspiracy is concerned, it is without any foundation on facts and evidence. He submitted that the other Police Officers against whom similar charges were levelled are (i) Mr. R.S.

Sharma, the then Police Commissioner, (ii) Pradip Sawant, Deputy Commissioner of Police, (iii) Dattatray Dal, the Senior Inspector and (iv) API Dilip Kamat. He submitted that Mr. Sharma, Mr. Kamat and Mr. Dal have been released on bail. He submitted that the case against the applicant and the case against Mr. Sharma, Mr. Sawant and Mr. Dal in respect of the allegation of conspiracy is almost identical. The learned Senior Counsel Mr. Naphde relied upon the Judgment of the Supreme Court in the case of Ranjitsing Brahmajeetsing Sharma Vs State of Maharashtra & Anr. reported in **2005 ALL MR (Cri) 1538 (S.C.)** The learned Senior Counsel submitted that in the absence of any proof, the activities of the Assistant Police Inspector Mr. Kamat could not even remotely be said to have been done with the knowledge or tacit consent of the applicant. The second submission of the learned Senior Counsel appearing on behalf of the applicant was regarding the sloppy investigation. It is submitted by the learned Senior Counsel that the applicant had taken all steps for the purpose of investigating the said offence. He submitted that after the information was received on 8/6/2002, the applicant had deputed Police Personnel to check the addresses furnished by the Pune Police and this was borne out by the entries in Station Diary

of Central Intelligence Unit (CIU) of Crime Branch. It is submitted that the Investigating Officer did not examine their Police Personnel attached to Office of the applicant to find out whether the accused acted on information received on 8/6/2002 from Pune Police. He invited my attention to the report of API Palande which clearly indicated that the staff of CIU headed by Sr. P.I. Dhoble left their Office at 18.45 Hrs. to check their addresses. He submitted that the report also mentions that API Khaire personally visited Bund Garden Police Station, Pune and collected the required information. However, the statement of API Khaire was not recorded. The report also indicated that the addresses which were given by the Pune Police to the applicant and the addresses from where the Pune Police seized the bogus stamps were different. It is further submitted that the report of Unit-III was suppressed by the Investigating Officer. It is then thirdly submitted by the learned Senior Counsel that so far as allegation of fabrication of letter dated 10/6/2002 is concerned, there is no evidence to show that the letter dated 10/6/2002 is antedated. It was submitted that the I.O. did not produce the outward register maintained in the office of the applicant. In the absence of outward register being produced, it was not possible to say that the

letter was antedated by the applicant. It was submitted that in order to substantiate the said allegation it was necessary for the I.O. to examine the recipient of the said letter i.e. Senior Inspectors of Police of Unit I and II of CIU. However, it was submitted that the statement of these officers were not recorded. The learned Senior Counsel further submitted that in respect of the allegation regarding no amount being taken by the applicant, he submitted that the Investigating Officer had not indicated as to what steps were required to be taken by the applicant and there was no specific evidence against the applicant. It was submitted that the applicant issued circular dated 19/7/2002, directing the Senior Police Inspector in-charge of the Police Station to keep close watch on the shop in the vicinity of the courts and find out whether fake stamps are being sold. He submitted that this destroys the story of the prosecution that the applicant had not taken any steps. He further submitted that the applicant's endorsement on the wireless message received on 1/7/2002 from Additional Commissioner of Police, Pune shows that the applicant had acted promptly. The learned Senior Counsel further submitted that the allegation that the applicant transferred Christopher murder case to Crime

Branch Unit-V pursuant to and as part of conspiracy, is unfounded. He submitted that the case was rightly transferred to the Crime Branch under Standing Order No. 140 and for that purpose approval of the Police Commissioner was not necessary. The learned Senior Counsel further submitted that so far as activities of Kamat are concerned, there is no evidence to show that the applicant had knowledge about the same. It was submitted that there is no evidence to show that the applicant knew about Kamat's visit to Telgi in Bangalore Jail. It was submitted that the statement of Dhingra does not implicate the applicant in any way. It was further submitted that there is no evidence to show that the applicant knew that in Hyderabad seizure counterfeit Government stamp/papers worth about Rs 13 crores were seized and that Kamat prepared a false panchanama. He further submitted that the allegation that various comforts were provided to the accused Telgi in Crime Branch Unit-V is baseless and that no one had brought to the notice of the applicant that Telgi was given all these facilities to make it possible for Telgi to dispose of his properties or carry on his unlawful activities. The learned Counsel invited my attention to the statements of various witnesses which were recorded in support of the allegation which was made against the

applicant to show that even if the said evidence is accepted there was no way that the applicant would be convicted for having committed the alleged offence.

4. The learned Counsel appearing on behalf of CBI vehemently opposed the application for bail. He submitted that AKL Telgi - accused No.23 was carrying on his illegal activities relating to counterfeit Government stamps and stamp papers prior to the year 1994 and, initially, he had started purchasing gum-washed stamps from two other accused from Kolkatta and, thereafter, he decided to prepare counterfeit Government stamps and stamp papers instead of procuring them from Ramratan Soni and the first case against AKL Telgi was registered vide C.R. No. 91/93 of GBCBCID, Mumbai and till the registration of the present case at Bund Garden Police Station, as many as 11 cases were pending against him and against the members of his organized crime syndicate who were continuously carrying out unlawful activities under his directions. The learned Counsel invited my attention to the chronology of events which had taken place on the date of registration of C.R. No. 135/2002 at Bund Garden Police Station, Pune from 7/6/20002 till the arrest of the present applicant on 7/11/2003 by SIT, Pune. He submitted that the

applicant was a Joint Commissioner of Police (Crimes), Mumbai between the period from 21/3/2002 to 17/3/2003 during which time he was in a position of being aware about the continuing unlawful activities of the organized crime syndicate of AKL Telgi. He submitted that the applicant, as a co-conspirator with D.P. Kamat and others, assisted AKL Telgi in continuing his unlawful activities and this was done to obtain pecuniary gains from the funds of the organized crime syndicate of AKL Telgi. The learned Counsel submitted that with this objective, some cases were transferred for investigation to Dharavi Unit-V. He submitted that this could have been justified if all the 48 cases which were against him were transferred to the said Unit. However, the applicant transferred only few selected cases. The learned Counsel submitted that the custody of Telgi was with Mumbai Police from 28/10/2002 till 24/1/2003 during which time he was in custody of Dharavi Unit-V. However, thereafter, abruptly, his custody was surrendered to the Karnataka Government on 21/1/2003 without bothering to inquire with the local Police Station or other Police Stations in Maharashtra whether they require his custody. It was submitted that AKL Telgi remained in custody and control of D.P. Kamat which was evident from the station diary entries of Dharavi Unit-V. The learned

Counsel invited my attention to the various documents and other circumstances and statements of witnesses to indicate the role played by the applicant in this massive scam. He submitted that there was enough evidence to indicate that the applicant had received pecuniary gains from AKL Telgi which was evident from the statement of Dhingra. He also submitted that the statements of Brijbhan Singh, Chandwani and Kiran Thakker indicated that Telgi was allowed to carry out his unlawful activities and was permitted to make efforts to dispose of the properties acquired from the funds. It was submitted that API Kamat was virtually a member of the organized crime syndicate and was acting as front man for the applicant and, therefore, there was sufficient evidence to convict the applicant for the aforesaid offences. He submitted that therefore this was not a fit case for grant of bail.

FINDINGS AND CONCLUSIONS:

5. I have given my anxious consideration to the submissions made by the learned Senior Counsel appearing on behalf of the applicant and the learned Counsel appearing on behalf of the CBI.

6. After having gone through the entire statements of

relevant witnesses on which reliance has been placed by the learned Counsel appearing on behalf of the applicant and respondent and after having examined the legal position, I am of the view that no case is made out for grant of bail for the following reasons.

7. Section 21(4) of the MCOCA, 1999 reads as under:-

> 21(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-
>
> (a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and
>
> (b) where the Public Prossecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

A perusal of the said provision indicates that only

after the Court is satisfied that the applicant is not likely to be convicted for an offence punishable under MCOCA, 1999, he can be released on bail.

8. The Supreme Court in the case of Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra & Anr. reported in **2005 ALL MR (Cri) 1538 (S.C.)** has observed that ultimately the Court would decide on the facts of each case whether there is any material to indicate the involvement of the applicant and whether the nexus has been established by the prosecution between the applicant and the organized crime syndicate. In the present case, the learned Senior Counsel appearing on behalf of the applicant has argued the matter at length and has practically taken me through the entire charge-sheet for the purpose of showing that no case is made out against the applicant. The learned Senior Counsel has laboriously taken me through all the allegations which are made against the present applicant and has taken pains to show that none of the allegations has been proved against the applicant.

9. In this context, it will be essential to note that the principal allegation against the applicant is that he abetted and aided the members of the organized

crime syndicate, who was subordinate in the police force and that he had knowledge about the activities of AKL Telgi. It was only because of assistance which was given by the applicant and other Police Officers, the said Telgi could operate for considerably long period of time and, as a result, was successful in disrupting the entire State machinery in respect of production and sale of stamps etc. The loss to the State Exchequer has been roughly estimated in Rs 100 crores and that this net of selling the counterfeit stamps was spread all over the country. It is alleged that the applicant, apart from having received the pecuniary advantage, was actively assisting the said operation. Essentially, a gist of the submissions which are made by the learned Senior Counsel appearing on behalf of the applicant is that there is no evidence against the applicant to establish conspiracy or abetment. It is the case of the applicant that CBI has merely tried to draw inferences on the basis of conjecture and surmises without there being any evidence on record and that such an exercise even if it is undertaken would not conclusive prove the allegations against the applicant and that in such a case, at the highest, if there is some lapse on the part of the Investigating Officer or his Superior, disciplinary action could be taken against him but he

cannot be charged for having committed an offence under the MCOCA.

10. The learned Counsel appearing on behalf of the CBI, on the contrary, on the basis of chronology of events and the various statements of witnesses and the documents on record, submitted that there was sufficient material to show the applicant's involvement and complicity in the said crime.

11. So far as the first submission of the learned Counsel appearing on behalf of the applicant that there are reasonable grounds to believe that the applicant has not committed any offence under the MCOCA and, therefore, all the conditions under section 21 of the MCOCA are complied with, cannot be accepted. The reasons why I feel that reasonable grounds exists for believing that the applicant is guilty of such offence shall be considered at the appropriate place later on.

12. Before I consider the rival submissions on

merits, it would be appropriate first to consider the provisions of Section 21(4) of the MCOC Act which deals with the question of granting bail to a person accused of an offence under the said Act. Perusal of the said provision discloses that before granting bail, the court has to be satisfied that there are reasonable grounds for believing that the accused is not guilty of the said offence. Perusal of the said provision, therefore, clearly discloses that the court has to be satisfied that there are reasonable grounds to believe that applicant has not committed the offence.

13. The Apex Court has considered the provisions of Section 21(4) of the MCOC Act in the case of Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra & Anr. reported in 2005 ALL MR(Cri) 1538(S.C.). In para 46 of the said judgment, the Supreme Court has observed that presumption of innocence is a human right and Section 21(4) must be interpreted in the light of the aforesaid principle. The Apex Court in para 47 has framed the following questions for the purpose of granting bail:-

(a) Before granting bail, is it necessary for the court to record a finding, albeit, prima

facie when the accused is not guilty of offence under MCOC Act?

(b) Would there be any machinery available to the Court to ascertain that once the accused is enlarged on bail, he would not commit any offence whatsoever?

In para 48, the Supreme Court has observed that the findings on the questions formulated as above are to be given on objective consideration on the basis of record only for the purpose of bail and for no other purpose. The Supreme Court further in para 49 of the said Judgment has held that restrictions on the power of the Court to grant bail should not be pushed too far. If the Court, having regard to the material brought on record, is satisfied that in all probability the applicant may not be convicted then, in such a case, bail may be granted. Further in para 55, it has observed that Section 21(4) does not lead to the conclusion that the Court must arrive at a positive finding that the applicant has not committed the offence under the Act. It has further observed that Section 21(4) must be construed reasonably and the Court should maintain a delicate balance between a judgment of acquittal and conviction and an order

granting bail.

14. In para 57 of the said judgment, The Supreme Court has held that at the stage of bail, the Court has to arrive at a finding on the basis of broad probabilities and for this purpose the Court may have to probe into the matter deeper to arrive at a finding that the material on record may not justify a judgment of conviction and that such a finding while granting or refusing bail would be tentative in nature and the Trial Court would be free to decide the case on the evidence before it without in any manner being prejudiced by the earlier finding.

15. Keeping in view the aforesaid observations which are made by the Supreme Court, I shall proceed to examine the rival contentions on the merits of the case.

16. It is alleged by the prosecution that the applicant was a Joint Commissioner of Police (Crime Branch), Mumbai and was fully aware about the continuing unlawful activities of the Organised Crime Syndicate of AKL Telgi and he was a co-conspirator alongwith D. P. Kamath and others in abetting the continuing unlawful activities of AKL Telgi and his

Associates for the purpose of abetting the unlawful activities of the Organised Crime Syndicate. The scam, as the said case popularly known, involved huge amount of money running in hundreds and thousands crores and the extent of the loss to the State Exchequer is still not yet fully ascertained. In all 48 cases have been filed against AKL Telgi.

17. Since Section 21(4) casts a duty on the Court to satisfy itself that the material on record is not sufficient to convict the accused, it was necessary to examine the allegations, which were made against the applicant in the chargesheet and the statements of the witnesses and the documents on record, are also required to be examined. The learned counsel for the applicant and the learned counsel for the CBI have, therefore, taken me through the allegations against the applicant in the chargesheet and the other relevant material and, as a consequence, the applicant had to be heard at length.

18. I have given my serious consideration to the submissions which are made by the respective counsel. I am satisfied that the applicant has not succeeded in showing that there are reasonable grounds to believe that the applicant has not committed an offence and it

is not possible to record a finding that, prima facie, applicant is not guilty of the offence under the MCOC Act for the reasons which are stated herein below.

19. In order to appreciate the submissions which are made by the learned Counsel for the applicant, it is necessary to briefly summarise the allegations made against the applicant in the charge-sheet, which are as under:-

(I) In December 1993 Abdul Karim Ladsab Telgi (A-23) hereinafter referred to as "Telgi" was arrested by Mumbai Police in C.R. No. 91/93 and while he was in police custody he came in contact with one Ram Ratan Soni who was involved in sale of counterfeit Government stamp papers / stamps. At the instance of said Soni, Telgi obtained government stamp vending licence on 18-3-1994 to vend at 29 Police Court Lane, Fine Mansion, Fort, Mumbai - 400 001. This is the starting point of Telgi Scam relating to counterfeit Government Stamp & Stamp papers. In course of time Telgi built up huge economic empire. In the process Telgi engaged services of printers, computer

operators, transporters, police officials and public servants as members of organized crime syndicate.

(II) It is further alleged that some public servants have dishonestly and intentionally prepared false records with the intention to save the members of Organized Crime Syndicate (OCS) and that such public servants being legally bound to apprehend persons involved in the scam intentionally failed to apprehend such persons and that they rendered help/support in commission of Organised Crime (OC) and that they abstained from taking lawful measures, under the MCOC Act knowingly fully well that they will thereby cause loss to the nation and that they prevented forfeiture of property of members of O.C.S. It is further alleged that these public servants have committed criminal misconduct and that they have obtained for themselves valuable things of pecuniary advantage by corrupt or illegal means.

(III) It is alleged that Telgi hatched series of conspiracies with the other co-accused and

members of his OCS to further the larger conspiracy of promoting continuing of unlawful activities of his OCS Dilip Pandurang kamat(A-44) who was attached to Crime Branch Unit V, Dharavi Mumbai was an active member of the Organised Crime Syndicate and as a member of OCS he was a co-conspirator with the following Police Officers (1) Dattatray Yeshwant Dal (A-50) who was during the material period Senior Inspector incharge of Crime Branch Unit V, (2) the Applicant herein (A-59), (3) Ranjit Singh Sharma (A-60) who was then Commissioner of Police, Mumbai and (4) Pradip Bhalchandra Sawant (A-65) who was Deputy Commissioner of Police(Crime Detection). The Common object of this Criminal Conspiracy was to render help and support to Telgi to carry on continuing unlawful activities. It is further alleged that Telgi was provided various facilities for the purpose of disposing of his properties which he had acquired from illegal gains made in dealing with counterfeit, Government stamps and stamp papers. It is further alleged that these properties were liable to be attached under Section 20 of the MCOC Act. It was also

to ensure that Telgi and other members of Organised Crime Syndicate would be saved from legal punishment by concocting and fabricating false papers of investigations.

(IV) It is further alleged that on 7.6.2002 and 8.6.2002 the then Pune Police Commissioner (Mr.R.S. Sharma-A-60) requested the Applicant to verify few addresses in Mumbai through his officers where counterfeit stamps were reportedly stored. The applicant with a view to protect Telgi failed to get these addresses checked and to create a record that the action was taken, the Applicant fabricated a letter dated 10-6-2002 issued to Senior Police Inspectors of Unit-I, II and CIU directing officers to check whether addresses given to him were the same from where Pune Police subsequently recovered bogus counterfeit Government Stamps/Papers. The said letter is allegedly antedated.

(V) It is alleged that Pune Police between the period 8-6-2002 to 15-6-2002 conducted searches at various places in and around Mumbai and seized huge cache of counterfeit

Government Stamps/Papers and machinery for manufacturing such counterfeit Government Stamps/Papers. The magnitude of the seizure was so alarming that it warranted immediate action by Sr.Mumbai Police Officers but the Applicant did not take any action with the sole intention to save Telgi and his associates.

(VI) It is further alleged that the Applicant received a wireless message from Additional Police Commissioner(Crime), Pune informing that Telgi and others are involved in selling counterfeit Government Stamp/Papers. On this message the Applicant made an endorsement as follows:-

"Where is Telgi? Why not taken in the murder case?"

It is further alleged that this endorsement shows that the Applicant had knowledge of various cases pending against Telgi and his involvement in O.C. Dilip Kamat(A-44) in connivance with the Applicant, D.C.P. Pradeep Sawant (A-65) and Dattatraya Dal (A-50)

hatched a Criminal conspiracy to obtain from Telgi monetary benefits by promising him full support and help to facilitate continuing unlawful activities and this is evident from the intercepted telephonic conversations between Telgi (A-23), Kamat (A-44), Rashid Kulkarni (A-49) and others. As a sequel to this conspiracy Kamat (A-44) visited Telgi in Bangalore Jail on 21-7-2002 who readily joined the conspiracy and in turn promised to pay huge money as gratification. This unofficial visit of Kamat was orchestrated by the Applicant, Pradeep Sawant (A-65) and Dal (A-50) to initiate conspiracy and develop links with Telgi.

(VII) It is further alleged that the involvement of Telgi and his Associates in Christopher Murder Case (Sahunagar Police Station C.R.No.123/2001) was disclosed on 16-6-2002 during the investigation conducted by Bund Garden Police Station, Pune, and accordingly custody of 6 Accused persons was taken over by Sahunagar Police Station on 30-6-2002 and that this was already a detected case. The applicant in conspiracy with Kamat

(A-44), Dattatray Yeshwant Dal (A-50) and Pradeep Bhalchandra Sawant (A-65) transferred this case to Crime Branch Unit V to ensure that no other Police Station gets the custody of Telgi.

(VIII) It is further alleged that pursuant to the conspiracy, Kamat (A-44) was again sent to Bangalore Jail on 27-7-2002 alongwith Kulkarni (A-49) to strike a deal with Telgi for clubbing all Telgi cases in Mumbai and transferring them to Crime Branch Unit-V for further investigation. In this meeting with Telgi, Kamat hatched a parallel conspiracy with tacit consent of his senior co-conspirators to recover counterfeit stamps/papers belonging to Telgi which were in possession of One Rais Khan and Hamid at Hyderabad and sell them. Kamat was able to operate with such impunity only with the tacit consent of the Applicant, Pradeep Sawant (A-65) and Dal (A-50) as none of them objected to these movements and activities of Kamat. Intercepted telephonic conversations show that Hyderabad operation was carried out at the instance of Telgi and that counterfeit

Government Stamps/Papers worth about Rs.13 crores were actually seized at Hyderabad. Kamat prepared a false panchanama showing recovery of Stamps worth only Rs.3.67 Crores and the rest of the counterfeit Government Stamps/papers were illegally kept in possession of Kamat as a part of the conspiracy to probably sell them to get monetary benefits.

(IX) It is further alleged that as a part of the conspiracy custody of Telgi was obtained by Crime Branch Unit V on 28-10-2002 in C.R.No.123/2001 of Shahunagar Police Station and Telgi was given all creature comforts and he was allowed to carry on his continuing lawful activities of selling counterfeit Government stamps/papers and also make efforts to dispose of properties acquired from funds of OCS. It is further alleged that Police custody remand period of Telgi in Shahunagar murder case No.123/2001 was to expire on 25-11-2002 but the Applicant as Joint Commissioner deliberately issued on 22-11-2002 order for transferring seven other cases against Telgi registered at other Police

Stations to Crime Branch Unit No.V only with the object of ensuring that custody of Telgi remains only with Crime Branch Unit V and that too with Kamat (A-44) and Dal (A-50). This was due to allow Telgi to continue his illegal business and to get monetary benefits for police officers.

(X) It is further alleged that as per standing orders these cases should have been entrusted to economic offences wing but in furtherance of the said conspiracy these seven cases were transferred to Crime Branch Unit No.V by the Applicant without the approval of Police Commissioner. This transfer of investigation was made to ensure that lapses are left in the investigation so that Telgi and his Associates escape punishment.

(XI) It is further alleged that during Police Custody Telgi was lodged in luxurious hotels and even at his residence and all facilities like telephone, mobile were accessible to him.

(XII) It is further alleged that the Applicant was a member of the Special Task Force formed

by Government Order dated 30-9-2002 to take a review of Counterfeit stamp cases and that by order dated 8-11-2002 he had directed Police Inspector Bhat of MCOC Cell to scrutinize case papers of these cases and submit a report. Police Inspector Bhat submitted a report on 28-11-2002 and 6-12-2002 to the Applicant. The Applicant without waiting for these reports transferred the cases to Crime Branch Unit V in undue haste. These reports brought out lacunae and deficiencies in these investigations.

(XIII) It is further alleged that in furtherance of conspiracy Telgi was taken to his native place Khanapur in Belgaum District of Karnataka on 13-11-2002 and there royal treatment was given to Police party by Telgi. Telgi was taken to Khanapur to meet his relatives and to facilitate illegal monetary transactions. Deputy Inspector General Auradkar of Karnataka telephonically informed the Applicant about the presence of Telgi in Khanapur.

(XIV) It is further alleged that investigation

in cases transferred to Crime Branch Unit V was deliberately poor and perfunctory and Telgi was released on bail in 4 cases.

(XV) It is further alleged that Police Inspector Zahid of Cyber Cell of Mumbai Crime Branch had been entrusted with an enquiry relating to Telgi. It was brought to the notice of the Applicant on 8-8-2002 that Police Inspector Zahid had done an excellent job and instead of co-relating the contents of this enquiry with other cases and motivating the officers the Applicant expressed displeasure with Zahid enquiry and suppressed evidence. Zahid had brought out details of Telgi's Bank accounts and addresses from where Telgi was operating as early as on 29-7-2002. This evidence could have been effectively utilized in pending cases especially in the light of the communication received by the Applicant from Pune Police Commissioner and Additional Police Commissioner. However, the Applicant never wanted the racket to be exposed and that is why he wanted investigation to be done only by Crime Branch, Unit V where the gang member of Telgi, Dilip

Kamat (A-44) was working to ensure deficient investigation.

(XVI) It is alleged that on 9-1-2003 Additional Director General of Police, Bangalore alongwith Officers of Special Investigation Team Pune viz. D.I.G. S.K. Jaiswal and other officers visited the residence of Telgi at 7, Cuffe Parade and they found that Telgi was living there and that 3 policemen of Crime Branch Unit V were there. This was reported to the Police Commissioner and D.I.G. Jaiswal submitted a report dated 10-1-2003 to the Government. It is further alleged that to cover up misdeeds of Dilip Kamat (A-44) another conspiracy was hatched by the Applicant, Pradeep Sawant (A-65), Dattatraya Dal (A-50), Kamat, Rashid Kulkarni (A-49) and Telgi. In pursuance of this conspiracy, Telgi was allowed to establish contact with his employees and the subsequent chain of events led to the recovery of counterfeit Government Stamp/papers worth about Rs 830 Crores. This recovery is made on 12/1/2003 at the instance of Telgi in a godown at Bhiwandi. But the Applicant with a view to

help Telgi gave approval to fabricated panchanama and showing the recovery at the instance of the Accused Shabir Ahmed Shaikh (A-24) and that Shabir is a member of Ram Ratan Soni gang though the Applicant knew that Shabir is a member of Telgi's Crime Syndicate.

20. Now coming to the submissions which are made by the learned Senior Counsel appearing on behalf of the applicant, the learned Counsel has submitted that the action which was taken by the applicant against the Organized Crime Syndicate of AKL Telgi alongwith other circumstances clearly show that the applicant is not a co-conspirator. In support of the said submission, the learned Counsel invited my attention to the prompt action which was taken by the applicant on various dates. He invited my attention to a wireless message which was sent to Mumbai Police on 1/7/2002 and in which the applicant had made various endorsements which showed that the applicant had acted diligently. He further submitted that Pune Police had sought help from Mumbai Police and the applicant had promptly complied with the same which was evident from the statement of DCP Koregaonkar of Pune. He further submitted that Pune Police had asked Mumbai Police to check certain addresses where fake stamp papers were

allegedly stored and the applicant had promptly deputed his subordinate which was evident from the statement of DCP Koregaonkar. He also invited my attention to the report of API Dilip Palande of CIU, Crime Branch, which stated that the applicant had directed the Officers and Staff of CIU on 8/6/2002 to search some addresses which were described in report and the Search Team had contacted Sengaokar, DCP, Pune. However, it was reported that nothing was found at the addresses which were furnished by the Pune Police. He also invited my attention to the station diary entry dated 8/6/2002 made by Sr. P.I. Dhoble which indicated that Search Team had contacted DCP Sengaonkar, Pune. He also invited my attention to API Mukedkar's Report which showed that Dhoble and Mukedkar were not made as an accused and, therefore, it could not be said that the search was an eye wash. These submissions of the learned Senior Counsel about prompt action being taken by the applicant cannot be accepted. The record indicates that the case of Bund Garden Police Station was registered on 7/6/2002. Thereafter, on 8/6/2002, the applicant received communication asking him to verify certain addresses relating to stocks of counterfeit stamps and stamp papers. According to the applicant, they could not get hold of such stocks at the addresses. But, as

rightly pointed out by the learned Counsel appearing on behalf of C.BI., between 9th and 10th of June, 2002, huge recovery of counterfeit Government Stamps and stamp papers were made from the immediate vicinity of the addresses. This creates a strong case of suspicion against the present applicant. Various material on record which would be discussed hereinafter also indicates that the applicant virtually kept AKL Telgi under his protection and allowed him to carry on his activities. He was also given all types of comforts when he was detained. Thus, the instances which are pointed out by the learned Senior Counsel for the applicant cannot be seen in insolation but has to be read in the context of the material which is on record which reveals a larger picture of the applicant being in touch with AKL Telgi and acting as a co-conspirator alongwith API Dilip Kamath and further endorsement on the office order at page 8 of the CBI compilation indicates that on 30/6/2002 four accused had been transferred from Bund Garden Police Station to Shahu Nagar Police Station in a murder case. There is some substance in the submission made by the learned Counsel appearing on behalf of CBI that this indicated that the applicant along with API Kamath wanted to ensure that none except themselves should procure the custody of

AKL Telgi as they wanted to keep him in their custody.

21. A further involvement of the applicant can be seen from the statement of Kishore Dhingra who has stated that Kamath received Rs 5 lakhs in the first week of July, 2002 and, thereafter, Kamath visited Bangalore on couple of occasions and, even at the instance of AKL Telgi, had gone to Hyderabad and stamp papers recovered from Hyderabad were deliberately dumped in CR No. 73 of 2002, which was a non-Telgi case. This is further corroborated by the statement of Head Constable Atyalkar and PSI Juvekar. There is also considerable substance in the submission made by the learned Counsel appearing on behalf of prosecution that the applicant had permitted AKL Telgi to visit his native place on 13/11/2002 in village Khanapur, though this village does not fall on the Bombay-Bangalore Highway.

22. There is further considerable substance in the submissions made by the learned Counsel appearing on behalf of prosectuion which is reflected from the remand application of DCBCID in which the statement is made that there are witnesses who can identify Telgi and, therefore, it was not necessary to hold identification parade. This statement was made in the

remand application dated 21/1/2003 in which it was mentioned that the police custody of the accused Telgi was not required for further investigation and permission was sought to send the accused back to Bangalore Jail. The submission of the learned Senior Counsel appearing on behalf of the applicant that a prompt action had been taken by the applicant falls to the ground in the face of these circumstances which indicate that the applicant had allowed AKL Telgi to be taken back to Bangalore though he very well knew that several cases were pending in Maharashtra and that the custody of Telgi was required in those cases.

23. The learned Senior Counsel appearing on behalf of the applicant further assailed the allegations against the applicant of having received gratification from the Organized Crime Syndicate of Telgi. He submitted that, in the charge-sheet dated 20/2/2004, no such allegation was made against the applicant. He further invited my attention to the remand application dated 8/11/2003 in which it was stated that there was evidence to show that the applicant had received Rs 72 lakhs from Telgi. However, there was no such evidence and material before the Police to indicate that the payment of Rs 72 lakhs was received. It was submitted that, therefore, there was a breach of section 50 of

the Criminal Procedure Code. It was further submitted that in the statement of Dhingra dated 3/8/2004, he had stated that an amount of Rs 15 lakhs was paid to API Kamath who was the collecting agent of the applicant. The learned Senior Counsel Shri Naphade assailed the statement of Dhingra and submitted that the said statement cannot be accepted as evidence of the applicant receiving monies. The learned Senior Counsel cited number of instances in support of the said submission. This submission of the learned Counsel for the applicant also cannot be accepted. At this stage, it is not open for this Court to assess the statements of witnesses as is done by the Court while appreciating the evidence on record. The Court has to examine whether there is any material on record or not and, while doing so, the Court can certainly go a little deeper in the material in order to have a closer scrutiny. However, it cannot scrutinize the evidence in such a manner that it would tantamount to appreciation of evidence. It is no doubt true that in the initial remand application, it has been stated that the applicant had received an amount of Rs 72 lakhs and the material which is on record indicates that the witness Dhingra had stated that an amount of Rs 15 lakhs was paid to the applicant. This would not mean that the statement of the witness has to be

totally discarded. Alongwith the statement of Dhingra, the statement of Prakash Chandwani also refers to this fact. Considering these submissions, therefore, it cannot be said that there is no material on record that the applicant received money from Telgi. The learned Senior Counsel further submitted that the allegation about fabrication of Bhiwandi Panchanama was made at the instance of the applicant is false and that there is no substance in this allegation. The learned Senior Counsel further invited my attention to the statement of Shri Padwal and to the Panchanama regarding seizure of the counterfeit stamp papers from the Godwon at Bhiwandi. The learned Senior Counsel submitted that the allegation that the Bhiwandi Panchanama was fabricated in the morning is false which could be seen from the remand application dated 8/11/2003. The learned Senior Counsel invited my attention to the statement of wireless operator Dhanwat in which he had stated that on 12/1/2003, there was a meeting in the morning at Dharavi Unit Office which was attended by the applicant, API Kamath and Sr. PI Dal and other officers and, in that meeting, a decision to fabricate the panchanama was taken. The learned Senior Counsel further submitted that, in the old charge-sheet, it was alleged that the panchanama was fabricated at

night at 8.30 P.M. It was submitted that no explanation has been given as to why in the remand application time was mentioned as morning and what was the material on the basis of which the allegation was made in the remand application. The learned Senior Counsel also strenuously urged that this allegation is false as can be seen from the statement of ACP Padwal in which he had stated that on 12/1/2003, he visited Dharavi Unit Office and at that time P.I. Dal and other Officers were present and that he does not remember whether any seized stamps were brought or not and that there was no meeting on 12/1/2003. The learned Senior Counsel also submitted that ACP Padwal in his statement dated 12/11/2003 and 15/11/2003 had stated that Senior PI Dal had told him on telephone that Godwon storing counterfeit stamps was found at Bhiwandi and the same was seized and that he went to the Unit at about 11.00 to 11.30 in the morning and further details as to how Telgi had given information about Bhiwandi Godwon and that further the applicant had, in the panchanama, showed that this Godwon was shown at the instance of Telgi's colleague Shabir Shaikh and when the decision was opposed by Padwal, the applicant had asked him to keep quiet. The learned Senior Counsel assailed the statement of Padwal on various grounds. This submission of the

learned Senior Counsel for the applicant cannot be accepted for the simple reason that there cannot be any appreciation of evidence at this stage and what has to be seen is, whether sufficient material exists which would show the involvement of the accused. It is a fact that the panchanama discloses that the counterfeit stamp papers at Bhiwandi Godown were shown at the instance of Shabir. There is statement of Padwal who alleges that Telgi had given instructions to one of his colleagues to show the Godown. The finger of suspicion, therefore, clearly points towards the applicant who had means to fabricate the panchanama. Merely because there is some discrepancy regarding the time when the panchanama was fabricated would not by itself make that material inadmissible or having no probative value.

24. The learned Senior Counsel then submitted that the allegation that the applicant transferred Telgi cases from local Police Stations to Crime Branch with ulterior motive is false. It was submitted that none of the superior Officers of the applicant raised objection regarding transfer of these cases. He invited my attention to Standing Order 140 which empowered the applicant to transfer the cases in the circumstances set out in the Standing Order. He

submitted that applying the norms mentioned in the said Standing Order, the applicant was fully justified in transferring the cases. It was submitted that the allegation that the applicant transferred the cases to Crime Branch because API Kamath was in Crime Branch Unit No.V. It was submitted that there was no evidence to show that Kamath was brought to Crime Branch by the applicant. It was submitted that Kamath was not I.O. in all the cases and there were other Officers who were I.Os. The learned Senior Counsel gave names of the other I.Os. in the various other cases. It was submitted that, therefore, there was no substance in the allegation that the cases were transferred because API Kamath was in Unit No.V. This submission also cannot be accepted because the learned Counsel appearing on behalf of C.B.I. has shown me the Chart which gives the period of custody, C.R Numbers and names of the Investigating Officers. It was submitted that though the names of different I.Os. have been mentioned, yet, through out, AKL Telgi remained under control and in custody of API Kamath which was evident from the station diary entries of Dharavi Unit No.V. which are annexed to CBI compilation from page Nos. 66 to 218 which documents also show that during this period on 60 occasions, AKL Telgi was taken out of the precinct of Dharavi Unit

No.V and during this period AKL Telgi was kept elsewhere and was given all comforts which has been noted by DIG Jaiswal and other Officers. There is also abundant material to show that the applicant had close-door meetings with AKL Telgi and was constantly in touch with him.

25. The learned Senior Counsel, thereafter, assailed the allegation regarding deliberate lapses in the investigation and also the allegation that Inspector Zahid's Report dated 15/1/2003 was suppressed. This submission also cannot be accepted in view of the statements of Brijbhan Singh, Chandwani and Kiran Thakker which clearly show that Telgi was allowed to dispose of the properties acquired from the funds and was allowed to carry out his unlawful activities. There is also sufficient material to indicate that official records were fabricated.

26. In the face of this material, it cannot be said that there is no material against the applicant or that his role was similar to the role played by Ranjitsing Sharma who has been released on bail by the Supreme Court or that he cannot be termed as a co-conspirator in the absence of any material. There is voluminous evidence on record and, in my view,

prima facie case has been made out by C.B.I. against the applicant and, therefore, it cannot be said that the applicant is not guilty of the offence punishable under the MCOC Act. The application for bail filed by the applicant, therefore, will have to be dismissed.

27. Accordingly criminal application is dismissed.

(V.M. KANADE, J.)